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FEDERAL ELECTION COMMISSION
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FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

PRE-MUR: 596
DATE FILED: August 29, 2016
DATE OF NOTIFICATION: September 2, 2016
LAST RESPONSE RECEIVED: November 16, 2016
DATE ACTIVATED: December 6, 2016

November 19, 2018
LATEST SOL: November 19, 2018
ELECTION CYCLE: 2014

SOURCE:

Sua Sponte Submission

RESPONDENTS:

Amedisys, Inc. PAC and Scott Levy in his official
capacity as treasurer
Amedisys, Inc.

MUR: 7132
DATE COMPLAINT FILED: September 1, 2016
DATE OF NOTIFICATION: September 8, 2016
LAST RESPONSE RECEIVED: October 18, 2016
DATE ACTIVATED: December 6, 2016

EARLIEST SOL: November 19, 2018
LATEST SOL: November 19, 2018
ELECTION CYCLE: 2014

COMPLAINANTS:

Amedisys, Inc.
Amedisys Inc. PAC and Scott Levy in his official
capacity as treasurer

RESPONDENTS:

Michael David Pitts
Evergreen Incentives, LLC

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30102(b)(3)
52 U.S.C. § 30104
11 C.F.R. § 102.6(b)
11 C.F.R. § 102.8
11 C.F.R. § 102.15

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

1 **I. INTRODUCTION**

2 These matters arose from a *sua sponte* submission and a Complaint filed by Amedisys,
3 Inc. ("Amedisys") and Amedisys, Inc. PAC ("Amed PAC") alleging that Michael David Pitts
4 ("Pitts"), a former officer of Amedisys who also formerly performed accounting and compliance
5 duties at Amed PAC, embezzled \$79,640 from Amed PAC in November 2013 by forging a
6 check from Amed PAC's bank account and making it payable to Evergreen Incentives, LLC
7 ("Evergreen"), which Pitts controlled. In the *sua sponte* submission, Amed PAC acknowledges
8 that Pitts' embezzlement and concealment caused the PAC to file an inaccurate 2013 December
9 Monthly Report, and as a consequence, the cash-on-hand balances it subsequently reported were
10 also inaccurate. Amedisys also acknowledges that to at least some extent, Pitts' embezzlement
11 was made possible by the company's failure to timely transfer the receipts of its payroll
12 deductions to the PAC.

13 Pitts pled guilty to wire fraud in connection with stealing nearly \$8 million from
14 Amedisys between 2006 and 2014, and in October 2016, he was sentenced to four years in prison
15 and ordered to pay full restitution.¹ While the activity described in the criminal charge did not
16 include the funds that Pitts took from Amed PAC, the restitution order includes a requirement
17 that Pitts repay \$79,640 to Amed PAC, which equals the amount Pitts stole from Amed PAC.²

18 We recommend that Amed PAC be referred to the Alternative Dispute Resolution Office
19 ("ADRO") for further review consistent with the Commission's recent practice in similar
20 embezzlement matters. Regarding the untimely transfer of payroll deductions to Amed PAC,

¹ See *Sua Sponte* Submission at 2; Pitts' Resp. and Supp. Resp. and attachments.

² See Pitts' Supp. Resp. and attached final court judgment at 5. Amedisys states that it has recovered a total of \$7.6 million from assets held by Pitts and from Amedisys' insurance company as a part of the restitution in the criminal matter, and is prepared to use a portion of that recovery to make Amed PAC whole from the theft by Pitts. *Sua Sponte* Submission at 4.

1 which involves both Amed PAC and Amedisys, we recommend that these violations be referred
2 to ADRO as well. Since Amedisys and Amed PAC are the only respondents in the *sua sponte*
3 submission, Pre-MUR 596, and are not respondents in the Complaint, we recommend that
4 Pre-MUR 596 be transferred to ADRO. We further recommend that the Commission find reason
5 to believe that Michael David Pitts knowingly and willfully violated 52 U.S.C. § 30102(b)(3)
6 and 11 C.F.R. § 102.15 by commingling Amed PAC funds with his personal funds, and enter
7 into pre-probable cause conciliation with him. As to Evergreen, we make no recommendation
8 with respect to it as we have been unable to confirm its legal existence separate from Pitts, and it
9 is a company Pitts used to further his embezzlement scheme.³

10 II. FACTUAL AND LEGAL ANALYSIS

11 A. Factual Background

12 Amedisys is a home health and hospice care company operating in more than 30 states.⁴
13
14 Amed PAC is the separate segregated fund of Amedisys. Pitts is the former Vice President for
15 Tax of Amedisys.⁵ While employed with Amedisys, the company and the PAC's treasurer
16 assigned to Pitts the task of preparing and filing the PAC's campaign finance reports, which he
17 did from 2007 until 2014 when he left Amedisys.⁶ During this period, only Pitts had direct
18

³ Evergreen did not respond to the Complaint.

⁴ See <http://www.amedisys.com/our-company.aspx>.

⁵ See Compl. at 1.

⁶ Compl. at 1; *Sua Sponte* Submission at 2 and attached affidavits of Dale Edward Redman and Scott Ginn, Amed PAC's treasurer and assistant treasurer, respectively, when Pitts embezzled funds from Amed PAC.

1 access to Amed PAC's bank records.⁷ After Amedisys discovered Pitts' theft from the company,
2 it hired a law firm in 2015 to review its political and lobbying operations, including Amed PAC.⁸

3 Pitts, in his capacity as a Vice President of Amedisys, was also responsible for
4 transferring payroll deductions from Amedisys' employees to Amed PAC. Amedisys alleges
5 that Pitts did not timely transfer these payroll deductions; instead, he allowed them to accumulate
6 in Amedisys' payroll system, and then transferred them to Amed PAC in bulk.⁹ Specifically, in
7 November 2013, Pitts transferred \$85,000 in payroll deductions into Amed PAC's bank account,
8 but he only reported \$5,360 of the \$85,000 as receipts on Amed PAC's disclosure report, a
9 difference of \$79,640.¹⁰ On November 19, 2013, Pitts wrote a check for that same amount from
10 the PAC account – forging the signature of Amedisys' Chief Executive Officer, William Borne –
11 to Evergreen, a "fictitious business entity" that Pitts created and controlled.¹¹ Pitts also failed to
12 include the disbursement of \$79,640 on Amed PAC's 2013 December Monthly Report.¹² To
13 conceal the embezzlement, Pitts did not include the PAC's November 2013 bank statement or a
14 copy of the check in the PAC's records.¹³

⁷ *Sua Sponte* Submission at 2.

⁸ *Id.*

⁹ Compl. at 1, 2.

¹⁰ Amed PAC reported itemized contributions of \$5,120 and unitemized contributions of \$240 from Amedisys officers and employees. See Amed PAC's 2013 December Monthly Report at 4, 6.

¹¹ See Compl. at 1 and *Sua Sponte* Submission at 3. According to Amedisys, prior to Borne's death in 2016, he confirmed to Amedisys personnel that he neither signed nor authorized the \$79,640 disbursement from Amed PAC to Evergreen Incentives. Compl. at 1 and *Sua Sponte* Submission at 1. While Amedisys and Amed PAC describe Evergreen as a fictitious business entity based on Pitts' plea agreement, the agreement itself merely states that Pitts created Evergreen, which was "also utilized to carry out his scheme to defraud." See Pitts Resp. and attached plea agreement at 8.

¹² Compl. at 1 and *Sua Sponte* Submission at 3.

¹³ *Sua Sponte* Submission at 3. Pitts routinely placed the bank statements and other information used to prepare FEC reports in the appropriate Amed PAC files. *Id.*

Pitts responded that he is willing to cooperate with the Commission to resolve this matter.¹⁴ Pitts asserts that he has already made some restitution to Amedisys by selling his home and liquidating financial assets, and he acknowledges that the restitution order includes paying \$79,640 to Amed PAC.¹⁵

B. Legal Analysis

1. Amed PAC Disclosure:

Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.¹⁶ In 2007, the Commission established a safe harbor to benefit committees that file inaccurate reports because their funds were unknowingly misappropriated by committee fiduciaries and staff.¹⁷ The Commission stated that it would not seek a monetary penalty from a committee for filing inaccurate reports due to embezzlement if the committee maintained certain internal controls at the time and took certain steps after discovery of the embezzlement. The Commission concluded that those internal controls and post-discovery steps “represent the *minimum* efforts a committee must take to qualify for this safe harbor.”¹⁸

In the *sua sponte* submission, Amed PAC acknowledges that its disclosure reports understated receipts by \$79,640, failed to disclose the contributors of those funds, and failed to

¹⁴ Pitts Resp. at 1; Pitts Supp. Resp. at 2.

¹⁵ Pitts Resp. at 1; Pitts Supp. Resp. at 1.

¹⁶ 52 U.S.C. § 30104(a). *See also* 52 U.S.C. § 30104(b).

¹⁷ *See* Statement of Policy: Safe Harbor for Misreporting Due to Embezzlement, 72 Fed. Reg. 16695 (Apr. 5, 2007) (“2007 Policy Statement”).

¹⁸ *Id.* (emphasis added).

1 disclose the payment to Evergreen Incentives, LLC.¹⁹ Regarding remedial measures, Amed PAC
2 has appointed a new treasurer and assistant treasurer, and one of them reviews and approves each
3 disclosure report.²⁰ Amed PAC says that it now uses multiple employees to track its receipts and
4 disbursements each month,²¹ and it gives multiple compliance employees access to its online
5 bank records.²² Finally, Amed PAC states that it has adopted other aspects of the Commission's
6 2007 Policy Statement on Safe Harbor for Misreporting Due to Embezzlement.²³

7 Because of Pitts' embezzlement and his efforts to conceal it, the PAC failed to disclose
8 the receipt of \$79,640 in payroll contributions, and a disbursement of \$79,640 to Evergreen
9 Incentives on its December 2013 Monthly Report. These actions also caused Amed PAC to
10 report its cash-on-hand inaccurately. It further appears that Amed PAC lacked effective internal
11 controls in its accounting and financial operations, and its treasurer was not sufficiently
12 involved in preparing and filing its disclosure reports.²⁴ Amed PAC maintains that it has now

¹⁹ *Sua Sponte* Submission at 3.

²⁰ *Id.* at 4; *see also* Amed PAC's Amended Statement of Organization (Dec. 1, 2015).

²¹ *Sua Sponte* Submission at 4.

²² *Id.*

²³ *Id.*

²⁴ Amed PAC failed to follow two internal controls referred to in the Commission's 2007 Policy Statement that may have prevented the embezzlement. Amed PAC did not follow the internal control concerning the reconciliation of bank statements for unauthorized transactions to the accounting records and reconciliation of bank records to disclosure reports, which states that someone other than a check signer or an individual responsible for handling the committee's accounting conducts the reconciliations. *See* 2007 Policy Statement. It appears that Pitts wrote checks for Amed PAC, handled its accounting operations, and conducted reconciliations. Further, Amed PAC did not follow the internal control stating that an individual who does not handle the committee's accounting or have banking authority receives incoming checks and monitors all other incoming receipts and places a restrictive endorsement such as "For Deposit Only to the Account of Payee" on all checks. *Id.* It appears that Pitts handled all these functions.

1 implemented sufficient internal controls, including those suggested in the Commission's 2007
2 Policy Statement.²⁵

3 Even though Amed PAC lacked effective controls, in similar circumstances, the
4 Commission has sent committees to the ADRO, and we recommend the Commission do likewise
5 here.²⁶

6 2. Amed PAC and Amedisys Payroll Deduction Transmittal

7 Every person who receives a contribution of \$50 or less for a political committee which
8 is not an authorized committee shall forward such contribution to the treasurer of the political
9 committee no later than 30 days after receipt.²⁷ Every person who receives a contribution in
10 excess of \$50 for a political committee which is not an authorized committee shall, no later than
11 10 days after receipt of the contribution, forward to the treasurer of the political committee the
12 contribution along with other information about the contributor.²⁸ In the case of a collecting
13 agent—an organization or committee that collects and transmits contributions to a separate

²⁵ As of the date of this Report, Amed PAC has not amended its 2013 December Monthly Report to disclose the receipts and the disbursement that it failed to report due to the embezzlement.

²⁶ In some recent embezzlement matters, the Commission has assigned the committees to ADRO. See RR 15L-03/ADR 784 (McConnell-Senate Committee) (assigning committee to ADRO for embezzlement of \$100,634); RR 13L-33/ADR 739 (Lynn Jenkins for Congress) (assigning committee to ADRO for embezzlement of \$21,300).

Thus, transfer to ADRO appears appropriate.

²⁷ 52 U.S.C. § 30102(b)(2); 11 C.F.R. § 102.8(b)(1).

²⁸ 52 U.S.C. § 30102(b)(2); 11 C.F.R. § 102.8(b)(2).

1 segregated fund to which the collecting agent is related—the full amount of each contribution
2 collected shall be transmitted to that fund within 10 or 30 days as required.²⁹

3 Separate segregated funds are responsible for ensuring that collecting agents meet
4 recordkeeping, reporting, and transmittal requirements.³⁰ As a separate segregated fund of
5 Amedisys, Amed PAC was responsible for ensuring that Amedisys, its collecting agent for
6 payroll deductions, timely transferred such deductions to Amed PAC within the relevant period
7 of 10 or 30 days.³¹

8 Amedisys admits in its *sua sponte* submission that “[t]o at least some extent,” Pitts’
9 embezzlement was “made possible by the company’s failure to transfer the receipts of its payroll
10 deductions for the PAC in a timely manner.”³² Amedisys acknowledges that Pitts transferred
11 those contributions to Amed PAC “on an occasional basis.”³³ Accordingly, Amed PAC appears
12 to have failed to ensure the timely transfer of payroll deductions from Amedisys, and Amedisys
13 appears to have failed to make those timely transfers. Although the Commission has conciliated
14 untimely transfer violations,³⁴ we recommend the Commission refer these violations to ADRO
15 because the embezzlement and the contribution transfer issues seem to be enmeshed elements of
16 Pitts’ scheme.³⁵

²⁹ See 11 C.F.R. § 102.6(b)(1), (c)(4) and 11 C.F.R. § 102.8.

³⁰ 11 C.F.R. § 102.6(c)(1).

³¹ See 52 U.S.C. § 30102(b)(2) and 11 C.F.R. §§ 102.6(c)(4) and 102.8.

³² *Sua Sponte* Submission at 3.

³³ Compl. at 1 and *Sua Sponte* Submission at 3.

³⁴ See MUR 6300 (Republican Party of Virginia), Conciliation Agreement.

³⁵ Amedisys maintains that it has made changes to its payroll operations, such as requiring transfers of payroll deductions on a monthly basis to Amed PAC, and that it can make transfers within 10 days for single payroll deduction contributions of \$50 or more. *Sua Sponte* Submission at 4.

3. Michael David Pitts

The Act and Commission regulations require that all funds of a political committee must be "segregated from and may not be commingled with the personal funds of any individual."³⁶

The Act prescribes additional monetary penalties for violations that are knowing and willful.³⁷

A violation of the Act is knowing and willful if the "acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law."³⁸ This does not require proving knowledge of the specific statute or regulation the respondent allegedly violated.³⁹ Rather, it is sufficient to demonstrate that a respondent "acted voluntarily and was aware that his conduct was unlawful."⁴⁰ This awareness may be shown through circumstantial evidence from which the respondent's unlawful intent reasonably may be inferred.⁴¹

Pitts forged the name of William Borne, Amedisys' Chief Executive Officer, on a check drawn on Amed PAC's bank account in the amount of \$79,640 and made payable to Evergreen Incentives. Evergreen Incentives had a bank account which Pitts controlled and Pitts' plea agreement states that Evergreen Incentives was one of the companies he used to carry out his

³⁶ 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15.

³⁷ See 52 U.S.C. §§ 30109(a)(5)(B), 30109(d).

³⁸ 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

³⁹ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 578 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

⁴⁰ *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

⁴¹ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants' convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

1 fraudulent scheme. Pitts did not place a copy of Amed PAC's November 2013 bank statement
2 nor a copy of the \$79,640 check in the PAC's records, likely to conceal his embezzlement.

3 The available information supports a reasonable inference that Pitts commingled PAC
4 contributions with personal funds. In Pitts' criminal plea, he admitted to creating Evergreen to
5 carry out his scheme, and the restitution order in the criminal matter requires Pitts to repay
6 \$79,640 to Amed PAC, the exact amount he embezzled from the PAC account.⁴² In addition, the
7 information supports a knowing and willful finding. Pitts, who prepared the PAC's disclosure
8 reports, under-reported the \$85,000 transfer of contributions, did not report the disbursement to
9 Evergreen, and did not include relevant documents in the PAC's records, all of which indicates
10 Pitts intended to conceal the embezzlement.⁴³

11 Therefore, we recommend that the Commission find reason to believe that Michael David
12 Pitts knowingly and willfully violated 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15.

13
14
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16

⁴² The Commission has found reason to believe there was commingling based on inferences like this in past matters, or based on the simple fact that a treasurer wrote checks to himself. *See Factual & Legal Analysis at 3, MUR 6768 (Debra Doherty) (finding reason to believe that the treasurer knowingly and willfully commingled committee funds with personal funds based on evidence that she wrote herself checks so that she could afford her home mortgage and health insurance payments, and those payments were "unlikely to be paid in cash"); Factual & Legal Analysis at 2-3, MUR 5872 (Jane Hague for Congress) (making a knowing and willful reason to believe finding because the Respondent wrote checks to herself from the Committee, which was enough to conclude that she "likely . . . commingled some, if not almost all, of the embezzled funds"); Factual & Legal Analysis at 3, MUR 5811 (Doggett for US Congress) (finding reason to believe that Respondent knowingly and willfully commingled based on evidence that the Respondent wrote herself checks from the Committee so that she could pay personal bills).*

⁴³ *See supra* footnote 42.

IV. RECOMMENDATIONS

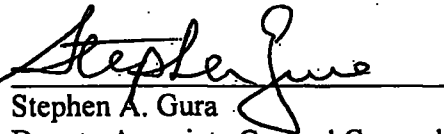
1. Transfer Pre-MUR 596 to the Office of Alternative Dispute Resolution;
2. Find reason to believe that Michael David Pitts knowingly and willfully violated 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15;
3. Enter into pre-probable cause conciliation with Michael David Pitts prior to a finding of probable cause to believe;
4. Approve the attached Conciliation Agreement for Michael David Pitts;
5. Approve the attached Factual and Legal Analysis for Michael David Pitts; and
6. Approve the appropriate letter.

Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel

3.6.17

Date


Stephen A. Gura
Deputy Associate General Counsel

Assistant General Counsel

Attorney

1. Factual and Legal Analysis for Michael David Pitts

1. Factual and Legal Analysis for Michael David Pitts

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 Respondent: Michael David Pitts

MUR 7132

6
7 **I. INTRODUCTION**

8 This matter arose from a Complaint filed by Amedisys, Inc. ("Amedisys") and Amedisys,
9 Inc. PAC ("Amed PAC") alleging that Michael David Pitts ("Pitts"), a former officer of
10 Amedisys who also formerly performed accounting and compliance duties at Amed PAC,
11 embezzled \$79,640 from Amed PAC in November 2013 by forging a check from Amed PAC's
12 bank account and making it payable to Evergreen Incentives, LLC ("Evergreen"), which Pitts
13 controlled.

14 Pitts pled guilty to wire fraud in connection with stealing nearly \$8 million from
15 Amedisys between 2006 and 2014, and in October 2016, he was sentenced to four years in prison
16 and ordered to pay full restitution.¹ While the activity described in the criminal charge did not
17 include the funds that Pitts took from Amed PAC, the restitution order includes a requirement
18 that Pitts repay \$79,640 to Amed PAC, which equals the amount Pitts stole from Amed PAC.²

19 The Commission found that there is reason to believe that Michael David Pitts knowingly
20 and willfully violated 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15 by commingling Amed
21 PAC funds with his personal funds.

¹ Pitts' Resp. and Supp. Resp. and attachments.

² See Pitts' Supp. Resp. and attached final court judgement at 5..

1 **II. FACTUAL AND LEGAL ANALYSIS**

2
3 **A. Factual Background**

4
5 Amedisys is a home health and hospice care company operating in more than 30 states.³

6 Amed PAC is the separate segregated fund of Amedisys. Pitts is the former Vice President for
7 Tax of Amedisys.⁴ While employed with Amedisys, the company and the PAC's treasurer
8 assigned to Pitts the task of preparing and filing the PAC's campaign finance reports,⁵ which
9 available information indicates he did from 2007 until 2014 when he left Amedisys. The
10 available information also reveals that during this period, only Pitts had direct access to Amed
11 PAC's bank records.

12 Pitts, in his capacity as a Vice President of Amedisys, was also responsible for
13 transferring payroll deductions from Amedisys' employees to Amed PAC. Amedisys alleges
14 that Pitts did not timely transfer these payroll deductions; instead, he allowed them to accumulate
15 in Amedisys' payroll system, and then transferred them to Amed PAC in bulk.⁶ Specifically, in
16 November 2013, Pitts transferred \$85,000 in payroll deductions into Amed PAC's bank account,
17 but he only reported \$5,360 of the \$85,000 as receipts on Amed PAC's disclosure report, a
18 difference of \$79,640.⁷ On November 19, 2013, Pitts wrote a check for that same amount from
19 the PAC account – forging the signature of Amedisys' Chief Executive Officer, William Borne –

³ See <http://www.amedisys.com/our-company.aspx>.

⁴ See Compl. at 1.

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⁷ Amed PAC reported itemized contributions of \$5,120 and unitemized contributions of \$240 from Amedisys officers and employees. See Amed PAC's 2013 December Monthly Report at 4, 6.

1 to Evergreen, a "fictitious business entity" that Pitts created and controlled.⁸ Pitts also failed to
2 include the disbursement of \$79,640 on Amed PAC's 2013 December Monthly Report.⁹ To
3 conceal the embezzlement, Pitts did not include the PAC's November 2013 bank statement or a
4 copy of the check in the PAC's records.¹⁰

5 Pitts responded that he is willing to cooperate with the Commission to resolve this
6 matter.¹¹ Pitts asserts that he has already made some restitution to Amedisys by selling his home
7 and liquidating financial assets, and he acknowledges that the restitution order includes paying
8 \$79,640 to Amed PAC.¹²

9 **B. Legal Analysis**

10 The Act and Commission regulations require that all funds of a political committee must
11 be "segregated from and may not be commingled with the personal funds of any individual."¹³
12 The Act prescribes additional monetary penalties for violations that are knowing and willful.¹⁴
13 A violation of the Act is knowing and willful if the "acts were committed with full knowledge of
14 all the relevant facts and a recognition that the action is prohibited by law."¹⁵ This does not

⁸ See Compl. at 1. According to Amedisys, prior to Borne's death in 2016, he confirmed to Amedisys personnel that he neither signed nor authorized the \$79,640 disbursement from Amed PAC to Evergreen Incentives. *Id.* While Amedisys and Amed PAC describe Evergreen as a fictitious business entity based on Pitts' plea agreement, the agreement itself merely states that Pitts created Evergreen, which was "also utilized to carry out his scheme to defraud." See Pitts Resp. and attached plea agreement at 8.

⁹ Compl. at 1.

¹⁰ Information available to the Commission indicates that Pitts routinely placed the bank statements and other information used to prepare FEC reports in the appropriate Amed PAC files.

¹¹ Pitts Resp. at 1; Pitts Supp. Resp. at 2.

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1 require proving knowledge of the specific statute or regulation the respondent allegedly
2 violated.¹⁶ Rather, it is sufficient to demonstrate that a respondent “acted voluntarily and was
3 aware that his conduct was unlawful.”¹⁷ This awareness may be shown through circumstantial
4 evidence from which the respondent’s unlawful intent reasonably may be inferred.¹⁸

5 Pitts forged the name of William Borne, Amedisys’ Chief Executive Officer, on a check
6 drawn on Amed PAC’s bank account in the amount of \$79,640 and made payable to Evergreen
7 Incentives. Evergreen Incentives had a bank account which Pitts controlled and Pitts’ plea
8 agreement states that Evergreen Incentives was one of the companies he used to carry out his
9 fraudulent scheme. Pitts did not place a copy of Amed PAC’s November 2013 bank statement
10 nor a copy of the \$79,640 check in the PAC’s records, likely to conceal his embezzlement.

11 The available information supports a reasonable inference that Pitts commingled PAC
12 contributions with personal funds. In Pitts’ criminal plea, he admitted to creating Evergreen to
13 carry out his scheme, and the restitution order in the criminal matter requires Pitts to repay
14 \$79,640 to Amed PAC, the exact amount he embezzled from the PAC account.¹⁹ In addition, the

¹⁶ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 578 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

¹⁷ *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

¹⁸ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

¹⁹ The Commission has found reason to believe there was commingling based on inferences like this in past matters, or based on the simple fact that a treasurer wrote checks to himself. *See Factual & Legal Analysis* at 3, MUR 6768 (Debra Doherty) (finding reason to believe that the treasurer knowingly and willfully commingled committee funds with personal funds based on evidence that she wrote herself checks so that she could afford her home mortgage and health insurance payments, and those payments were “unlikely to be paid in cash”); *Factual & Legal Analysis* at 2-3, MUR 5872 (Jane Hague for Congress) (making a knowing and willful reason to believe

1 information supports a knowing and willful finding. Pitts, who prepared the PAC's disclosure
2 reports, under-reported the \$85,000 transfer of contributions, did not report the disbursement to
3 Evergreen, and did not include relevant documents in the PAC's records, all of which indicates
4 Pitts intended to conceal the embezzlement.²⁰

5 Therefore, the Commission found that there is reason to believe that Michael David Pitts
6 knowingly and willfully violated 52 U.S.C. § 30102(b)(3) and 11 C.F.R. § 102.15.

finding because the Respondent wrote checks to herself from the Committee, which was enough to conclude that she
"likely . . . commingled some, if not almost all, of the embezzled funds"); Factual & Legal Analysis at 3, MUR 5811
(Doggett for US Congress) (finding reason to believe that Respondent knowingly and willfully commingled based
on evidence that the Respondent wrote herself checks from the Committee so that she could pay personal bills).

²⁰ See *supra* footnote 20.